



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 3818-99
9 December 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 19 April 1983 and reported to active duty that same day. The record shows that you had completed four years of active service on a prior enlistment. During the next 28 months you served in an excellent manner and were advanced in rate to MM2 (E-5).

On 8 August 1985 the Navy Drug Laboratory reported that urinalysis showed that you had used marijuana. Four days later, you received nonjudicial punishment for use of a controlled substance. The punishment included a reduction in rate to MM3 (E-4) and forfeiture of \$554 pay. Subsequently, you were found to have potential for further service and were recommended for participation in an outpatient counseling program.

The record shows positive urinalyses on 30 September 1985 and 11 March 1986. On the 27 March 1986, you were informed that you were being retained in the Navy, but warned that further misconduct could result in an administrative discharge. On 16 April 1986 you were evaluated and appeared not to be dependent on any substances. It was recommended that you be scheduled to attend a rehabilitation program as soon as possible. On 14 May 1986 you again tested positive for use of marijuana.

Based on the foregoing record of drug abuse you were processed for an administrative discharge. In connection with this processing you elected to waive your right to have your case heard by an administrative discharge board. On 26 June 1986 the discharge authority approved the recommendation of your commanding officer that you be discharged for misconduct with a discharge under other than honorable conditions. You were so discharged on 3 July 1986.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your prior honorable service, the period of good service in your second enlistment and the documentation you submitted showing that you have been a good citizen since discharge. The Board also considered your contentions that you were never allowed to attend any level of counseling following your drug usage because your ship was continuously at sea. You also contend that you were never informed that you could challenge the urinalyses. You are concerned that there may have been some false positives.

The Board found that these factors and contentions were not sufficient to warrant recharacterization of your discharge or to change the reason for your discharge. There is no evidence in the record, and you have submitted none, to show that you were denied counseling for drug abuse. However, the record does show repeated instances of drug use and findings that you were not drug dependent. Since you were not drug dependent and were aware of the consequences of further drug use, the Board believed that your continuing drug use was indicative of willful misconduct. Given the passage of over 10 years since the urinalyses which resulted in your discharge, the chain of custody of the urine samples and the accuracy of the urine testing cannot be verified. However, the Board is aware that the cut off level for reporting a positive drug urinalysis is set at a sufficiently high level to prevent false positives. The Board concluded that the discharge under other than honorable conditions be reason of misconduct due to drug abuse was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board believes that you are eligible for benefits administered by the Department of Veterans Affairs (DVA) based on your honorable service ending on 1 March 1983. Therefore, if you have been denied benefits, you should appeal that denial under procedures established by the DVA.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material

evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

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The American Legion